No. 88-790, No. 88-805, No. 88-1125

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

No. 88-790

TURNOCK v. RAGSDALE

ON CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 88-805

OHIO v. AKRON CENTER FOR
REPRODUCTIVE HEALTH

ON APPEAL TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

No. 88-1125

HODGSON v. ILLINOIS

ON APPEAL TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

MOTION TO ALLOW COUNSEL TO REPRESENT CHILDREN UNBORN AND BORN ALIVE

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MOTION TO ALLOW COUNSEL TO REPRESENT CHILDREN UNBORN AND BORN ALIVE

The Court is moved to allow Alan Ernest to represent the victims being killed by Roe v. Wade, 410 U.S. 113, as counsel or guardian ad litem, for the purpose of defending their right to life under the U.S. Constitution.

INTEREST OF COUNSEL

Alan Ernest is a lawyer in the District of Columbia and a member of the bar of this Court. His purpose is to prove that the guarantee of life to "any person," made in the U.S. Constitution, does include the unborn.

This is effectively a motion to allow retained counsel since there will be no expense to this Court, or to the taxpayers.

SUMMARY OF ARGUMENT

The unborn have a constitutional right to be especially represented by counsel to prove that their lives are specifically guaranteed by the U.S. Constitution.

Argument

THE UNBORN HAVE A CONSTITUTIONAL RIGHT TO BE ESPECIALLY REPRESENTED BY COUNSEL TO PROVE THEIR LIVES ARE PROTECTED BY THE U.S. CONSTITUTION.

1.

THIS COURT EFFECTED AND MAINTAINED THE ROE v. WADE KILLINGS BY UNCONSTITUTIONALLY REFUSING TO ALLOW COUNSEL TO REPRESENT THE UNBORN AND DEFEND THEIR RIGHT TO LIFE UNDER THE U.S. CONSTITUTION.

Counsel did not especially represent the unborn in the U.S. District Court, or at any stage in Roe v. Wade. An original party objected that the unborn should be represented by counsel in this Court:

> (T)he Court should have every benefit of a complete record and the representation of a guardian ad litem for that fetal entity and for its natural right to develop to birth.[1]

But this Court refused to allow counsel to represent the unborn and defend their right to life under the U.S. Constitution. Thus the killings commenced.

And the Supreme Court has maintained the killings by steadfastly refusing to

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1. Petition for Rehearing 5, Doe v. Bolton, 410 U.S. 179 (1973), denied 410 U.S. 959 (1973).

allow counsel to represent the unborn, and defend their right to life under the U.S. Constitution.[2]

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2. The Court has refused to allow counsel for the unborn in all its abortion cases. Some are: Colautti v. Franklin, 439 U.S. 379, motion to allow counsel for the unborn denied 437 U.S. 902; Anders v. Floyd, 440 U.S. 445, motion to allow counsel for the unborn denied 439 U.S. 890; Bellotti v. Baird, 443 U.S. 622, motion to allow counsel for the unborn denied 439 U.S. 1065; Ashcroft v. Freiman, affirmed 440 U.S. 941, motion to allow counsel for the unborn denied, 440 U.S. 941; United States v. Zbaraz, 448 U.S. 358, motion to allow counsel for the unborn denied 444 U.S. 1030; Harris v. McRae, 448 U.S. 297, motion to allow counsel for the unborn denied 445 U.S. 941; H.L. v. Matheson, 450 U.S. 398, motion to allow counsel for the unborn denied 445 U.S. 959; Simopoulos v. Virginia, 462 U.S. 506, motion to allow counsel for the unborn denied 458 U.S. 1104; Planned Parenthood of Kansas City v. Ashcroft, 462 U.S. 476, motion to allow counsel for the unborn denied 458 U.S. 1104; Akron Center for Reproductive Health v. Akron, 462 U.S. 416, motion to allow counsel for the unborn denied 458 U.S. 1104; Diamond v. Charles, 90 L Ed 2d 48 (1986), motion to allow counsel for the unborn denied 87 L Ed 2d 704; Thornburgh v. American College of Obstetricians, 90 L Ed 2d 779 (1986), motion to allow counsel for the unborn denied 87 L Ed 2d 702; Hartigan v. Zbaraz, 98 L Ed 2d (1988), motion to allow counsel to for the unborn denied 93 L Ed 2d 697, and Webster v. Reproductive Health Services, ___ U.S. ___ (1989).

The unborn have a constitutional right to be represented by counsel in this case to defend their right to life under the U.S. Constitution.[3] Judges who willfully

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3. Even in civil proceedings, where crucial deprivations are threatened, such as loss of welfare, due process guarantees (1) prior notice of the factual and legal bases; (2) the right to be represented by counsel; (3) the right to confront and cross-examine adverse evidence; (4) the right to present evidence. Goldberg v. Kelly, 397 U.S. 254, 268-271 (1970). See also, In Re Gault, 387 U.S. 1 (1967).

Could it be possible that procedures, which could not be used to deprive a mother of welfare, could be used to exclude her from the protection of the U.S.Constitution so that she could be killed with impunity from criminal laws? This is preposterous.

The Constitution would not permit any court to condemn even one single Jew to death in a criminal case, but deny any of these procedural rights. Then neither can it permit any court to condemn all Jews in the United States to death, but deny any of these procedural rights, by calling it a civil proceeding, and decreeing the lives of all Jews are not protected by the U.S. Constitution, and it is "liberty" to kill all Jews with impunity from criminal laws.

Any victim is entitled to all these procedural protections before any court can decree that the victim's life is not protected by the Constitution, and the victim can be killed with impunity from criminal statutes. The rule for one is the rule for all; these are the sacred truth-seeking procedures which protect the lives of all Americans.

deny this right are guilty of crime.[4] This denial makes Roe v. Wade void.

2.

THIS COURT EFFECTED THE ROE v. WADE KILLINGS BY UNCONSTITUTIONALLY REFUSING TO ALLOW PRIOR NOTICE OF THE CONSTITUTIONAL STANDARDS, THE BURDENS OF PROOF, OR THE EVIDENCE WHICH IT USED TO INFER THAT THAT THE LIVES OF THE UNBORN ARE NOT PROTECTED BY THE U.S. CONSTITUTION.

The District Court in Roe v. Wade did not even look to see if the lives of the unborn were protected by the Constitution. This question was argued for the first time after the case reached this Court. Since this Court had never previously excluded anyone from the protection of the U.S. Constitution so they could be killed with impunity from criminal statutes, the parties had no prior notice of the factual and legal bases for such an exclusion.

Moreover in the aftermath of Dred Scott v. Sanford, legitimate public

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4. "Even judges ... could be punished criminally for willful deprivations of constitutional rights." Imbler v. Pachtman, 424 U.S. 409 (1976).

expectation rested on the assurance that this Court would never again attempt another exception to the universal terms "any person."[5]

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5. This Court's decision in Dred Scott v. Sanford appears to be the only precedent in American history in which this Court has implied an exception to the universal terms "any person" in the Fifth or Fourteenth Amendments. The Court there ruled that the universal words "any person" did not include Negroes, there was a constitutional right to own a slave, and Congress could not prohibit slavery in the free territories. This decision triggered a civil war. Candidate Abraham Lincoln vowed he would not obey Dred Scott. Opponents said their states would withdraw from the Union rather than be deprived of their assumed constitutional right to own slaves and take them to the free territories. 4 Collected Works of Abraham Lincoln 267 (1953). But President Abraham Lincoln responded that if he were bound by Dred Scott, "the people will have ceased to be their own rulers." Id., at 268. Thus the war commenced.

A purpose of the Fourteenth Amendment was to overrule Dred Scott, and place it beyond the power of judges to ever again produce convulsions by implying an exception the universal words "any person." For over a century legitimate public expectation rested on the assurance that this Court would never again attempt an exception to the universal terms "any person."

But without any prior notice, this Court once again, in the precise manner of Dred Scott, attempted to imply an exception to the universal words "any person." In Roe v. Wade, this Court thus combined both total surprise and violent defiance of the long standing legitimate public expectation that never again would this Court violate the universal words "any person."

In particular, this Court gave the parties in Roe v. Wade no prior notice of the constitutional standards, the burdens of proof, or the evidence, which the Court used to infer that the universal words "any person," as used in the Fourteenth Amendment, did not include the unborn.

The first time the parties had notice was when Roe v. Wade was published, and the victims were already condemned to death. An original party objected that it lacked the prior notice needed to defend the unborn:

> (N)ot only did the Court set a new constitutional standard, but at the same moment the Court applied the standard without giving the Appellees notice or opportunity to present evidence with respect to the point in gestation at which such standards, if they be correct as a matter of law in the first place, should be applied. "Viability", "meaningful life" or existence, "fetal life": all presumably have medical meaning which should be subject to medical testimony before a decision of constitutional import becomes solidified in concrete. These concepts are not even necessarily the appropriate ones.[6]

But this Court refused to allow the original parties to have prior notice. Thus the killings commenced.

And this Court has maintained the killings despite repeated objections that the unborn had no prior notice in Roe v. Wade of the factual and legal basis needed to defend the unborn's right to life under the U.S. Constitution.[7]

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6. Petition for Rehearing 6, Doe v. Bolton, 410 U.S. 179 (1973), denied 410 U.S. 959 (1973). (emphasis added).

7. See cases in note 2, supra.

The unborn have a constitutional right to prior notice of all the factual and legal bases before they can be excluded from the protection of the Constitution so they can be killed with impunity from criminal statutes.[8] Judges who willfully deny this right are guilty of crime.[9] This denial makes Roe v. Wade void.

3.

THIS COURT EFFECTED THE ROE v. WADE KILLINGS BY UNCONSTITUTIONALLY USING A SECRET EVIDENTIARY PROCESS TO FIND EVIDENCE TO INFER THAT THE LIVES OF THE UNBORN ARE NOT PROTECTED BY THE U.S. CONSTITUTION.

This Court used some secret evidentiary process, not open to the parties, to find evidence to infer that the lives of the unborn were not protected by the U.S. Constitution. The Court conducted these evidentiary proceedings in its back rooms; the parties were not allowed to be present; no public record was made of these proceedings. The purpose of these

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8. See note 3, supra.

9. See note 4, supra.

proceedings was to find evidence to infer that the lives of the unborn were not protected by the U.S. Constitution. An original party objected to these secret judicial proceedings:

> The Court has taken judicial notice of innumerable facts and factors, some which are expressly referred to in the Court's decision and some which are unknown to the parties but which apparently were extricated from various sources by the Court's diligent research, which facts nevertheless should be subject to refutation and counter-evidence since they form the foundation for the Court's opinion ... of constitutional stages of fetal growth.[10]

But the Court permitted the killings to commence despite this objection to its secret evidentiary proceedings.

And this Court has maintained the killings despite repeated objections that it used secret evidentiary proceeding in Roe v. Wade.[11]

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10. Petition for Rehearing 4, Doe v. Bolton, 410 U.S. 179 (1973), denied 410 U.S. 959 (1973).

11. See cases in note 2, supra.

The unborn have a constitutional right not to be excluded from the protection of the U.S. Constitution by secret evidentiary proceedings.[12] Judges who willfully deny this right are guilty of crime.[13] This denial makes Roe v. Wade void.

4.

THIS COURT EFFECTED AND MAINTAINED THE ROE v. WADE KILLINGS BY UNCONSTITUTIONALLY REFUSING TO ALLOW ITS EVIDENCE, WHICH IT USED TO INFER THAT THE LIVES OF THE UNBORN ARE NOT PROTECTED BY THE U.S. CONSTITUTION, TO BE CONFRONTED AND CROSS-EXAMINED.

Since the Court used a secret process, the original parties had not seen all the evidence which the Court used to infer that the lives of the unborn are not protected by the U.S. Constitution. An original party asked permission to cross-examine the evidence which the Court used to infer that the lives of the unborn were not protected by the U.S. Constitution:

> The Court has taken judicial notice of innumerable facts and factors, some

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12. See note 3, supra.

13. See note 4, supra.

> which are expressly referred to in the Court's decision and some which are unknown to the parties but which apparently were extricated from various sources by the Court's diligent research, which facts nevertheless should be subject to refutation and counter-evidence since they form the foundation of the Court's opinion .... of constitutional stages of fetal growth.[14]

But the Supreme Court refused to allow the original parties to cross-examine its evidence in Roe v. Wade, which it used to infer that the lives of the unborn were not protected by the U.S. Constitution. Thus the killings commenced.

And this Court has maintained the killings by steadfastly refusing to allow its evidence, which it used to infer that the lives of the unborn were not protected by the U.S. Constitution, to be confronted and cross-examined.[15]

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14. Petition for Rehearing 4, Doe v. Bolton, 410 U.S. 179 (1973), denied 410 U.S. 959 (1973) (emphasis added).

15. See cases in note 2, supra.

The unborn have a constitutional right to confront and cross-examine the evidence which this Court used to infer that their lives are not protected by the U.S. Constitution.[16] Judges who willfully deny this right are guilty of crime.[17] This denial makes Roe v. Wade void.

5.

THIS COURT EFFECTED AND MAINTAINED THE ROE v. WADE KILLINGS BY UNCONSTITUTIONALLY REFUSING TO ALLOW EVIDENCE TO BE PRESENTED ON BEHALF OF THE UNBORN TO ESTABLISH THEIR RIGHT TO LIFE UNDER THE U.S. CONSTITUTION.

In Roe v. Wade, the Court invented new constitutional standards on the protection of life by the U.S. Constitution, which the parties did not see until after Roe v. Wade was decided. The parties never had opportunity to present evidence under these new standards. An original party asked permission to present evidence under the new constitutional standards, which it had not seen before, to show that the lives of

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16. See note 3, supra.

17. See note 4, supra.

the unborn are protected by the

Constitution:

> We are dealing here with a procedure long considered outlawed and which has suddenly become become legal.
> ....
> What the Court has done is to compel the State to condone the killings of prenatal infants and even to encourage it by loose controls.
> ....
> The interest in protecting the concept of the sacredness of human life and the natural rights which follow its emergence, underlies the interest in protecting fetal life and is the root of the State's expressed desire to curb killing.
> ....
> The Court has selected a point in time at which states may protect fetal life, without any record of facts upon which to base the conclusion that only at "viability," as that term is defined by the Court, do the people of a state have authority to demand caution before a prenatal infant is destroyed.
> ....
> Appellees have had no opportunity to show by evidence in a traditional judicial trial setting at what gestational stage the separate life of the fetus is "meaningful" medically; in addition, the Court overlooked the significance of Georgia's legal recognition of meaningful human life as found in case law and statute.
> ....
> With no opportunity for Appellees to demonstrate the factual basis, in terms of current medical science, that its interest attaches at a particular

point in the natural development of a human fetus, the Court has seized upon the convenient point of "viability" and crystallized constitutional command which bars State action.

....

In the medical concept of "life," with its current body of technological knowledge, including such advances as fetal electrocardiography and fetal electroencephalography, legal "life" should not be cemented at an event in a judicial conclusion which does not have the benefit of medical evidence.

....

At any rate, Appellees should have an opportunity to present evidence and testimony to support the State's claim of medically and scientifically sound interest in requiring a cautious approach to the extinguishment of fetal life.[18]

But the Court refused to allow the original parties to present evidence to show that the lives of the unborn were protected by the U.S. Constitution. Thus the killings commenced.

And this Court has maintained the killings by steadfastly refusing to allow evidence to be presented on behalf of the

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18. Petition for Rehearing 3,4,5,6,8, Doe v. Bolton, 410 U.S. 179 (1973), denied 410 U.S. 959 (1973).

unborn to prove that their lives are protected by the Constitution.[19]

The unborn have a constitutional right to present evidence in this case to prove that their lives are protected by the U.S. Constitution.[20] Judges who willfully deny this right are guilty of crime.[21] This denial makes Roe v. Wade void.

The procedures used by the Court to effect and maintain the Roe v. Wade killings are essentially the same procedures cited by the Nuremberg Court as part of the evidence to convict the Nazi judges of complicity in extermination and murder.[22]

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19. See cases in note 2, supra.

20. See note 3, supra.

21. See note 4, supra.

22. "In many instances they were denied the right to introduce evidence, to be confronted by witnesses against them.... They were ... denied the right of counsel of their own choice....(T)he accused learned only a few moments before trial of the nature of the alleged crime for which he was to be tried. The entire proceedings from beginning to end were secret and no

II.
ISSUES RAISED BY COUNSEL NOT RAISED BY THE PARTIES

The parties have not raised the question of whether this Court must overrule Roe v. Wade because the lives of the unborn are protected by the U.S. Constitution.

The unborn have a right to be especially represented by counsel, to present evidence and arguments not presented by the parties, to show that the universal and unalienable guarantee of life to "any person," made in the U.S. Constitution, does include the unborn.[23]

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public record was allowed to be made of them." United States v. Altstoetter, 3 Trials of War Criminals Before the Nuernberg Military Tribunals 1046-1047 (1951).

"Such a mock trial is not a judicial proceeding but a murder." Id., at 1164.

"The dagger of the assassin was concealed beneath the robe of the jurist." Id. at 985.

23. This evidence and arguments are presented in the amicus curiae brief by the Legal Defense For Unborn Children, and incorporated herein by reference.

CONCLUSION

The photograph on the last page shows a child killed by a second stage abortion under Roe v. Wade. These children are entitled to have assistance of counsel to prove that the universal guarantee of life to "any person," made by the U.S. Constitution, includes the unborn.

When judges use the above procedures to defy the guarantee of life to "any person" in order to exclude millions of victims from the protection of the U.S. Constitution, so they can be killed with impunity from criminal statutes, it cannot be pretended it is any longer the government of the United States, or any government of Constitution and laws. "Such a mock trial is not a judicial proceeding but a murder."

This Court, and all the lower judges who have upheld this Court's claim of power to use such procedures to condemn millions

to death, are accused of premeditated capital mass murder.[24] "The dagger of the assassin was concealed beneath the robes of the jurist."

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24. U.S. DISTRICT JUDGES: Albert V. Bryan, Jr.; Emmett R. Cox; Edward T. Gignoux; Harold H. Greene; J. Thomas Greene; William B. Hand; Joseph C. Howard; Martin F. Loughlin; Robert Earl Maxwell; Louis F. Oberdorfer; Raymond J. Pettine; Aubrey E. Robinson, Jr.; John J. Sirica; James R. Spencer; James C. Turk; D. Dortch Warriner; Don J. Young. U.S. CIRCUIT JUDGES: D.C. Circuit- David L. Bazelon; Carl McGowan; Roger Robb; George E. MacKinnon; Spotswood Robinson III; J. Skelly Wright; Edward A. Tamm; Malcolm R. Wilkey. First Circuit- Levin H. Campbell; Frank M. Coffin; Hugh H. Bownes; Stephen G. Breyer. Fourth Circuit- Harrison L. Winter; Donald S. Russell; H. Emory Widener, Jr.; Kenneth K. Hall; James D. Phillips, Jr.; Fracnis D. Murnaghan, Jr.; James M. Sprouse; Sam J. Ervin, II; Robert F. Chapman. Eleventh Circuit- John C. Godbold; Paul H. Roney; Gerald B. Tjoflat; James C. Hill; Peter T. Fay; Robert S. Vance; Phyllis A. Kravitch; Frank M. Johnson, Jr.; Albert J. Henderson, Jr.; Joseph W. Hatchett; R. Lanier Anderson, III; Thomas A. Clark. AND the judges in Roe v. Wade and Doe v. Bolton who decreed a "liberty" to kill the unborn without any investigation to see if their lives were protected by the Constitution: Circuit Judges Morgan and Goldberg; District Judges Smith, Henderson, Hughes and Taylor.

Alan Ernest
Counsel for Movant